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The New Jersey Supreme Court's recent decision in *Alexander v. Seton Hall University* conforms New Jersey discriminatory wage payment law to the federal Lilly Ledbetter Fair Pay Act of 2009 (FPA), which means that regardless of the length of time a plaintiff has been subjected to discriminatory pay, the back-pay recovery for a New Jersey state claim based solely on wage discrimination will be limited to the two years before the filing date of the claim.

New Jersey Supreme Court Limits Employer Liability for State Unequal Wage Claims

By William P. McLane and Lindsay Sorin

On November 23, 2010, the New Jersey Supreme Court conformed New Jersey discriminatory wage payment law to that now existing under the federal Lilly Ledbetter Fair Pay Act of 2009 (FPA). In *Alexander v. Seton Hall University*, the court held, consistent with federal law, that each new payment of discriminatory wages constitutes a discrete, separate act with respect to an unequal wage claim arising under the New Jersey Law Against Discrimination (NJLAD). Accordingly, under the two-year NJLAD statute of limitations, plaintiffs may recover damages for discriminatory wages paid within two years of the filing of the discrimination claim – even if the discriminatory decision occurred prior to the limitations period. In so holding, the New Jersey Supreme Court rejected (as did the U.S. Congress) the United States Supreme Court's analysis under its 2007 *Ledbetter v. Goodyear Tire & Rubber Co.* decision.

Paula Alexander, Joan Coll, and Cheryl Thompson-Sard, three long-term female tenured Seton Hall professors, obtained a university report detailing the salaries of full-time faculty members by college, gender, rank, and salary. The report revealed that the university paid higher salaries to newer, younger faculty members. In addition, the plaintiffs discerned from the report a gender-based pattern of disparate compensation.

Plaintiffs sued under the NJLAD seeking damages in the form of back pay retroactive to their respective dates of hire – as far back as 34 years. The professors argued that under the “continuing violation” doctrine the disparate wages paid to them within two years of the filing of the complaint had the effect of sweeping in, and including as timely, all prior pay periods dating back to when the discriminatory pay decisions were made. In response, Seton Hall, citing the U.S. Supreme Court's *Ledbetter* decision, argued that all disparate wages paid to plaintiffs, including those paid within the two-year period immediately prior to the filing of the complaint, were the result of alleged discriminatory pay-rate decisions made outside of the two-year limitations period. Accordingly, Seton Hall argued plaintiffs' claims were completely time-barred.

The New Jersey Supreme Court rejected the plaintiffs' “continuing violation” argument as well as the university's time-barred theory and instead instituted the FPA approach. As such, the court held that “an unlawful act occurs every time wages, benefits or other compensation payments are made resulting from an earlier discrimination practice,”

thus allowing for recovery of back pay for only the two-year period preceding the filing of a complaint. Now, regardless of the length of time a plaintiff has been subjected to discriminatory pay, the back-pay recovery for a New Jersey state claim based solely on wage discrimination will be limited to the two years before the filing date of the discrimination claim.

The *Alexander* ruling has several implications for employers with New Jersey-based employees seeking to defend unequal wage discrimination claims under NJLAD:

- Employers sued under NJLAD can now raise a successful defense that damages for unequal wages under that statute are limited to a two-year period.
- NJLAD claims based on employment decisions made prior to the statutory two-year time limitation can still be timely pursued.
- Because New Jersey state courts are generally considered more favorable to employee claims than federal courts, New Jersey employers may face more NJLAD unequal wage claims in state court than federal lawsuits asserting claims arising under the FPA.

Employers with operations in New Jersey are advised to consult with employment law counsel to evaluate whether their compensation schemes may be vulnerable to disparate wage discrimination claims arising under either NJLAD or FPA.

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